

its underlying carrier is a slamming issue. Indeed, in the WIC Bureau Decision, the Common Carrier Bureau clearly determined that, under the specific circumstances presented in a formal complaint, a reseller's failure to inform its customers of a change in the underlying carrier was an unjust and unreasonable action pursuant to Section 201(b) of the Communications Act.²⁷ The WIC Commission Decision went further to find that the FCC's PIC verification rules were not even implicated by the reseller's ANI change orders.²⁸ The Commission has not demonstrated any compelling need to expand the finding of Section 201 unlawfulness in the WIC Bureau Decision into a finding of Section 258 unlawfulness as well. Nor does the language of Section 258 even suggest such a result. Thus, the Commission should not conclude that Section 258 applies to resale carriers changing their underlying carrier.

Nonetheless, WorldCom agrees with the Commission that a bright-line test would be helpful for resale carriers to understand when a change in an underlying carrier is unlawful under Section 201(b) of the Communications Act. The criteria established in the WIC Decision -- whether the switch to another carrier was a material fact and, if so, whether the reseller deliberately omitted this information to its end user customers -- is a useful starting point.²⁹

C. Underlying Facilities-Based Carriers Must Not Be Deemed Responsible For Any Slamming Practices Of Reseller Carriers

While the Notice does not ask specifically about the question of the liability, if any, of underlying, facilities-based carrier in a slamming incident involving a reseller,

²⁷ WIC Bureau Decision at para. 18.

²⁸ WIC Commission Decision at paras. 18-23.

²⁹ WIC Decision at para. 17.

WorldCom believes that the Commission should address this issue in this proceeding.

WorldCom has long been concerned about the issue of potential liability by facilities-based carriers for the actions of other carriers, such as so-called "switchless resellers," that resell the facilities-based carriers' services.³⁰ Switchless resellers buy bulk facilities and services from facilities-based carriers such as WorldCom, and then use these wholesale facilities and services as inputs to retail packages which they assemble and provide to their customers. In this type of business relationship, WorldCom serves only as the underlying network carrier. WorldCom has no direct involvement in the reseller's operations or marketing practices, and has no relationship of its own with the reseller's agents, representatives, or customers.

The long distance carrier chosen by any consumer is identified in the ILECs' billing systems by its carrier identification code ("CIC"). However, switchless resellers generally are not issued CICs of their own by Bellcore. As a result, these resellers must use the CIC of their underlying provider. In addition, even switch-based regional carriers sometimes make similar arrangements in areas where they lack sufficient originating traffic to justify activation of their own CIC. Typically, the reseller supplies a list of ANIs to the underlying carrier, which in turn passes them on to the ILEC for processing and execution. As the Commission has described it recently:

the Commission has recognized that switchless resellers ... are prevented, for technical reasons, from ordering service for their customers directly from the LECs. Instead, they must order access facilities and execute change orders through carriers such as Sprint or AT&T, which are facilities-based IXCs. Therefore, when a facilities-based IXC submits to a LEC

³⁰ See, e.g., Whitt/Muletta Letter at 1-3; LDDS CC Docket No. 94-129 Reply Comments at 9-11.

change orders on behalf of the switchless reseller, that carrier is not claiming the end user customer for its account; rather, it is simply facilitating changes that a switchless reseller ... cannot request on its own.³¹

The Commission went on to conclude that when a facilities-based carrier submits change orders to an ILEC on behalf of a reseller, it does so only "as an accommodation to" the reseller and "was not claiming the end-user customers" as its own.³²

One unfortunate result of these CIC arrangements between facilities-based carriers and switchless resellers, however, is that facilities-based carriers often are targeted incorrectly for the actions of the resellers which utilize their CICs. This is because, when switchless resellers are involved in disputes with a consumer over issues such as call slamming, the ILEC often only see the name of the underlying carrier in its data records. Subsequently, WorldCom can attest that, in the vast majority of FCC slamming complaints received by WorldCom, the complaining consumer has never become a WorldCom customer. Instead, the consumer has become a presubscribed customer of a switchless reseller which employs WorldCom's network to provide its retail services to the public.³³

As indicated above, the mere use of a facilities-based carrier's CIC by a switchless reseller does not imply any involvement by that underlying carrier in the reseller's alleged unauthorized change of a consumer's carrier, nor should it be construed as the underlying carrier's approval of the reseller's actions. As a provider of common carrier

³¹ WIC Commission Decision at para. 19.

³² Id.

³³ In fact, in WorldCom's own experience, approximately 90 percent of all FCC slamming complaints directed to WorldCom should have been directed to one of its reseller customers instead.

telecommunications services to resellers, the underlying facilities-based carrier acts only as the network provider for the reseller. Because underlying carriers do not participate in any way in the daily operations or the marketing practices of its carrier customers (including switchless resellers), underlying carriers had no involvement in those carriers' disputed long distance carrier changes. Yet this current "single CIC" situation indirectly benefits Bellcore's member carriers because it regularly tars the reputation of two long distance carriers with the slamming actually perpetrated by only one carrier, the reseller.³⁴

This issue will have further resonance in the local resale market as well. Where a CLEC employs the resold services of an underlying ILEC pursuant to Section 251(c)(4) of the Telecommunications Act,³⁵ the ILEC should not be responsible for any resulting actions by that reseller, including slamming practices. The same principle should hold true in both the local and long distance markets. Thus, the Commission should take this opportunity to clarify that facilities-based local and long distance carriers have no legal or regulatory liability for the actions of their resale customers, at least to the extent that they only provide underlying facilities-based services to those resellers.

WorldCom also urges the Commission to consider policy requirements that would

³⁴ In just one example, a Pennsylvania newspaper reported recently that WorldCom had switched an insurance company's preferred carrier to WorldCom without the company's permission. See "Slamming Leaps To Top Of Pennsylvania Phone Problems," The Times Leader (Wilkes-Barre, Pa.), August 26, 1997. However, further investigation revealed that the company's selection of preferred carrier actually had been changed to a switchless reseller (one utilizing WorldCom's CIC) at that same reseller's request. Because the ILEC's records only showed WorldCom's CIC, WorldCom was incorrectly fingered for the actions of a completely unaffiliated switchless reseller.

³⁵ 47 U.S.C. Section 251(c)(4).

allow underlying facilities-based carriers to separate themselves from the independent actions of their reseller customers. As one example, WorldCom officials have often discussed with several ILECs the possible uses of a "pseudo-CIC" which would show the reseller's name in the ILEC records and bills, rather than the facilities-based carrier's name. This arrangement would be wholly consistent with the Commission's previous call slamming proceeding, where several parties, including BellSouth, described the need to separate switchless resellers from their facilities-based network providers by the use of a pseudo-CIC system. In its resulting LOA Order, the Commission expressly prohibited resellers from confusing their customers with the names of other long distance carriers on their telephone bills.³⁶ Moreover, the Commission stated that it "urges LECs such as BellSouth to develop a coding system to assign and maintain pseudo-CICs for non-facility-based IXC's."³⁷ In order for the Commission to be able to assign carrier liability more quickly and accurately in formal and informal complaint proceedings, the Commission should take this opportunity to declare that ILECs must employ a "pseudo-CIC" system as soon as practicable, and in any event no later than July 1, 1998.

³⁶ Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, FCC 95-225, issued June 14, 1995, at para. 31.

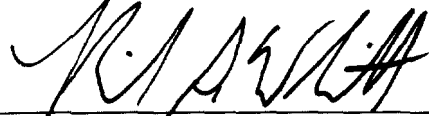
³⁷ Id.

IV. CONCLUSION

The Commission should adopt rules in accordance with the policy recommendations made above by WorldCom.

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WORLDCOM, INC.

A handwritten signature in black ink, appearing to read "C. R. Sloan", written over a horizontal line.

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September 15, 1997

CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 15th day of September, 1997, sent a copy of the foregoing "Comments of WorldCom, Inc." by hand delivery to the following:

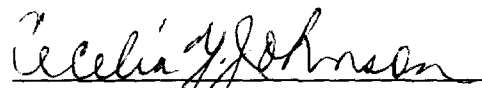
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